

200806012



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 14 2007

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =
IRA X =
IRA Y =
Account C =
Amount A =
Financial Institution B =
Amount B =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear

This is in response to your request dated March 22, 2007, as supplemented by correspondence dated May 7, 2007, July 11, 2007, and October 4, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 49, received a distribution on Date 1, 2004, from individual retirement account ("IRA") X in Amount A, with the intent to rollover Amount A into IRA Y. On Date 2, 2004, Taxpayer A sent the check for Amount A to a broker at Financial Institution B for deposit into IRA Y. Taxpayer A asserts that, contrary to his instructions, Financial Institution B instead placed Amount A into

Account C, a non-IRA account. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error on the part of Financial Institution B. Taxpayer A further asserts that of Amount A which was originally deposited into Account C, Amount B has not been used for any other purpose.

In early 2005, when Financial Institution B sent Taxpayer A a 2004 Form 1099-R indicating an early distribution, Taxpayer A relied on the advice of his accountant that the Form 1099-R was incorrectly completed, and filed his 2004 income tax return as though Amount A had been timely rolled over into IRA Y. Taxpayer A, relying on the representations of Financial Institution B, was unaware that Amount A had instead been placed in Account C.

By correspondence from the Internal Revenue Service of Date 3, 2007, Taxpayer A was notified that his taxable income had been increased by Amount A. On Date 4, 2007, Financial Institution B acknowledged its mistake in depositing Amount A into Account C, and offered to reimburse Taxpayer A for his damages and losses incurred with respect to the erroneous transaction.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that a failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error on the part of Financial Institution B, in depositing Amount A into a non-IRA account contrary to

Taxpayer A's instructions. We note, however, that of the amount originally distributed and deposited in Account C, only Amount B remains.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution to Taxpayer A of Amount B from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount B to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution of an amount not to exceed the total of Amount B will be considered a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose

CC: